

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Media Broadcasting Corporation	)	File No. EB-02-NF-019
	)	
Owner of Antenna Structure	)	NAL/Acct. No. 200232640005
Registration # 1011741	)	
Winston-Salem, North Carolina	)	FRN 0006-7563-73

### FORFEITURE ORDER

**Adopted: December 3, 2002****Released: December 5, 2002**

By the Chief, Enforcement Bureau:

#### I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of six thousand dollars (\$6,000) to Media Broadcasting Corporation ("Media") for willful and repeated violation of Sections 17.4(g) and 17.51(a) of the Commission's Rules ("Rules").<sup>1</sup> The noted violations involve Media's failure to post its antenna structure registration ("ASR") number and its failure to exhibit red obstruction lighting on its antenna structure between sunset and sunrise.

2. On June 13, 2002, the Commission's Norfolk, Virginia, Resident Agent Office ("Norfolk Office") issued a *Notice of Apparent Liability for Forfeiture* ("NAL") to Media for a forfeiture in the amount of twelve thousand dollars (\$12,000).<sup>2</sup> Media filed its response to the *NAL* on July 16, 2002.

#### II. BACKGROUND

3. Media is the licensee of broadcast station WAAA (AM) in Winston-Salem, North Carolina, and owns that station's antenna structure (ASR number 1011741). The ASR for that tower indicates that red obstruction lighting is required between sunset and sunrise. On January 22 and 23, 2002, an FCC agent from the Norfolk Office inspected the WAAA tower after sunset. On both occasions the agent observed that there was no red obstruction lighting and that the tower's ASR number was not posted. On January 24, 2002, the agent contacted the Federal Aviation Administration's ("FAA") Leesburg, Virginia, Flight Service Station, which advised the agent that there was no Notice to Airmen ("NOTAM")<sup>3</sup> in effect for the WAAA tower.

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<sup>1</sup> 47 C.F.R. §§ 17.4(g) and 17.51(a).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232640005 (Enf. Bur., Norfolk Office, released June 13, 2002).

<sup>3</sup> Tower owners are required to report any obstruction lighting outages to the nearest Flight Service Station or FAA office immediately if the outage is not corrected within 30 minutes. See 47 C.F.R. § 17.48(a). The FAA then

4. On February 1, 2002, the Norfolk Office issued a Notice of Violation (“NOV”) to Media for violations which included Sections 17.4(g) and 17.51(a) of the Rules. In its response to the NOV, filed on February 20, 2002, Media stated: that it had notified the FAA of the lighting outage prior to July 2001, when WAAA temporarily went silent; that it made several attempts to get the bulbs replaced, but “various certified tower companies” refused because of the age of the tower and the danger involved in climbing it; and that it believed the close proximity of a tower with lighting minimized the risk of an accident. Media’s response did not indicate whether it had posted the station’s ASR number.

5. On June 13, 2002, the Norfolk Office issued a *NAL* for a forfeiture in the amount of \$12,000 to Media for failure to post the ASR number, in violation of Section 17.4(g) of the Rules, and for failure to exhibit red obstruction lighting on the antenna structure between sunset and sunrise, in violation of Section 17.51(a) of the Rules. In its response, filed July 16, 2002, Media did not dispute the violations. Media argued, however, that the proposed monetary forfeiture should be cancelled or “greatly reduced” because of its inability to pay and because of the steps taken to correct the violations.<sup>4</sup> Media asserted that station WAAA went off the air on July 9, 2001, because of a dispute with the station’s landlord and did not resume operation until July 6, 2002. Media further asserted that it did not correct the lighting outage immediately because it had no income while the station was off the air and, therefore, could not afford the expense of hiring an out-of-state contractor to correct the outage; and that the deaths of its president’s mother, aunt and best friend also delayed correction of the outage. Finally, Media asserted that it would correct the outage “in just a few days now.”

6. Media, however, did not correct the outage within a few days. In a letter to the Commission postmarked August 16, 2002, Media indicates that it did not correct the outage because of the poor physical condition of the tower and the potential risk of serious harm to a climber. Media asserts that it now plans to replace the tower but does not indicate when it will do so. At the request of the Norfolk Office, a local police officer observed the WAAA tower at about 1:00 a.m. on October 17, 2002. The police officer reported to the Norfolk Office that the WAAA tower still had no obstruction lighting.

### III. DISCUSSION

7. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>5</sup> Section 1.80 of the Rules,<sup>6</sup> and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Policy Statement*”). In examining Media’s response, Section 503(b) of the Act requires that the Commission take into account

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issues a NOTAM, a written advisory to aircraft pilots regarding a hazard or potential hazard of which they should be aware. A NOTAM expires automatically after 15 days, unless the tower owner calls the FAA to extend the NOTAM.

<sup>4</sup> Media stated that the number “FRN 006-5587-53” is now posted at the tower site. This is not the number required to be posted. The number required to be posted is the ASR number, 1011741.

<sup>5</sup> 47 U.S.C. § 503(b).

<sup>6</sup> 47 C.F.R. § 1.80.

the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>7</sup>

8. Section 17.4(g) of the Rules requires posting the ASR number in a conspicuous place so that it is readily visible near the base of the tower. Media does not dispute this violation. Thus, Media willfully and repeatedly violated Section 17.4(g) of the Rules.

9. Section 17.51(a) of the Rules provides that all red obstruction lighting must be exhibited from sunset to sunrise unless otherwise specified in the ASR. Media does not dispute this violation. Thus, Media willfully and repeatedly violated Section 17.51(a) of the Rules.

10. Media has not yet corrected either violation. Even if Media had corrected both violations, no mitigation of the proposed forfeiture would be warranted on the basis of correcting the violations. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), “corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations.”<sup>8</sup>

11. However, based on the financial documentation provided by Media, we conclude that payment of more than \$6,000 would be a financial hardship for Media. Therefore, we will reduce the proposed forfeiture from \$12,000 to \$6,000.

12. We have examined Media’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Media willfully and repeatedly violated Sections 17.4(g) and 17.51(a) of the Rules, but we reduce the forfeiture amount from \$12,000 to \$6,000.

13. The Commission’s antenna structure rules are intended to promote air traffic safety. Accordingly, the Commission takes compliance with these rules seriously. We are concerned that Media’s tower remains in violation of these rules even after issuance of the *NAL*. The record indicates that Media has made no meaningful efforts to come into compliance (even after saying that it would do so) and there is no evidence that Media will actually come into compliance within the imminent future. Accordingly, we will require, pursuant to Section 308(b) of the Act,<sup>9</sup> that Media report to the Enforcement Bureau within thirty (30) days of the release of this *Order* the status of the antenna structure in question. Specifically, Media must report whether the antenna structure has been dismantled as it claims it plans to do in its response to the *NAL*. If the antenna structure has not been dismantled, Media must report whether it has corrected the violations that are the subject of this *Order*. Media’s report must be submitted in the form of an affidavit signed by an officer or director of the licensee. If Media fails to submit such a report or we find that Media has not come into compliance with our antenna structure rules, we will consider issuing an Order to Show Cause commencing a hearing proceeding to revoke Media’s licenses.

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<sup>7</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>8</sup> See also *Radio Station KGV, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

<sup>9</sup> 47 U.S.C. § 308(b)

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#### IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>10</sup> Media **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six thousand dollars (\$6,000) for failure to exhibit red obstruction lighting on its antenna structure between sunset and sunrise in repeated and willful violation of Sections 17.4(g) and 17.51(a) of the Rules.

15. **IT IS ALSO ORDERED** that, pursuant Section 308(b) of the Act, Media must submit the report described in Paragraph 13, above, within 30 days from the release of this *Order*, to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Room 7A 820, Washington, D.C. 20554.

16. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>11</sup> Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232640005 and FRN 0006-7563-73. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>12</sup>

17. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Media Broadcasting Corporation, P.O. Box 11197, Winston-Salem, North Carolina 27116-1197.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau

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<sup>10</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>11</sup> 47 U.S.C. § 504(a).

<sup>12</sup> See 47 C.F.R. § 1.1914.